

# Building Blocks for Effective Housing Elements

## Adequate Sites Inventory and Analysis

### ***Adequate Sites Alternative***

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*Government Code Section 65583.1 (a) and (c) allows second units and, under prescribed conditions, units that are substantially rehabilitated, converted from market rate to affordable, or where unit affordability is preserved to be counted towards the adequate sites requirement.*

#### **I. REQUISITE ANALYSIS**

Local governments can employ a variety of development strategies and/or commit to specific program actions to address the adequate sites requirement. As provided in Government Code Section 65583(c)(1), in addition to identifying vacant or underutilized land resources, local governments can meet up to 25 percent of the site requirement to provide adequate sites by making available affordable units through rehabilitation, conversion, and/or preservation.

#### **Substantial Rehabilitation, Conversion, and Preservation**

Under limited circumstances, a local government may credit up to 25 percent of their adequate sites requirement through existing units that will be:

- (1) substantially rehabilitated,
- (2) units in a multifamily rental housing complex of 4 or more units that are converted from non-affordable to affordable, or
- (3) units that will be preserved at affordable housing costs to low- or very low-income households, where the local government has provided those units with committed assistance.

Specifically, these units must meet all relevant requirements as follows:

**Substantially Rehabilitated:** Units to be substantially rehabilitated must result in a net increase in the stock of housing affordable to low- and very low-income households and include the following provisions:

- Units must be at imminent risk of loss to the housing stock.
- Local governments must commit to providing displaced tenants not otherwise eligible for relocation assistance under State relocation law, with assistance consistent with that required under Health and Safety Code Section 17975,

including a minimum of four months rent and moving expenses and comparable replacement housing.

- Relocation assistance must be provided to any occupants temporarily or permanently displaced and the local government must require that any displaced occupant will have the right to reoccupy the rehabilitated units.
- Rehabilitated units must have long-term affordability requirements, not less than 20 years or any other term required by federal or State funding law or regulation.

**Converted:** Multifamily units in a rental complex of 4 or more units converted from non-affordable to affordable by acquisition of the unit or the purchase of affordability covenants and restrictions. These units are not to be acquired by eminent domain and must provide a net increase in the stock of housing affordable to low- and very low-income households.

Converted units must be made available at affordable housing costs, not occupied by low- or very low-income households, and in decent, safe and sanitary condition when occupied. Long-term affordability covenants (not less than 55 years) apply to these units. Relocation assistance must be provided to any occupants temporarily or permanently displaced and the local government must require that any displaced occupant will have the right to reoccupy the rehabilitated units.

**Preserved:** Units to be preserved at affordable housing costs to lower-income households by acquisition of the unit or the purchase of affordability covenants for the units. Preserved units must:

- be located within an “assisted housing development” (see *II. Helpful Hints* for definition of assisted housing development for the purposes of this section);
- have new long-term affordability covenants and restrictions (at least 40 years);
- have received governmental assistance under specified programs;
- be expected to convert to non low-income uses; and
- be in decent, safe and sanitary condition.

Units must also be found, via a public hearing, as eligible for preservation with a reasonable expectation that the units will change from affordable to another use during the next five years. When units are identified for preservation, they must be available at affordable costs to persons and families of low- or very low-income.

### **Other Requirements to Meet the Alternative Site Requirement:**

- The housing element must include a program action that commits the local government to provide “committed assistance” through a legally enforceable agreement **within the first 2 years** of the planning period. The dollar amount of the committed assistance must be substantial enough to make the targeted units available for occupancy within two years of the execution date of the agreement.
- Jurisdictions are required to document the status of their committed assistance program during the housing element planning period in the annual report to the governing body. By no later than July 1<sup>st</sup> of the third year of the planning period, a local government must report on the status of its program implementation for substantial rehabilitation, conversion, and/or preservation (of affordability) as described above (Government Code 65583.1(c)(7)). The report should identify the units for which committed assistance has been provided and indicate how each unit complies with the statutory requirements. If the jurisdiction has not entered into an enforceable agreement of committed assistance for all the units initially identified, the local government must adopt an amendment to its housing element identifying additional adequate sites sufficient to accommodate the number of units for which committed assistance was not provided. Jurisdictions which do not amend their element to include adequate sites, or which do not complete rehabilitation, acquisition, purchase of affordability covenants, or the preservation of identified units within two years after the committed assistance was provided are prohibited from identifying substitute units in the next regular housing element update, above the number of units actually provided or preserved with committed assistance.
- Only those local governments (during the current or immediately prior planning period) that have met some of their share of the regional need for housing affordable to low- and very low-income households may use the alternative sites provision of housing element law. Documentation of having met this need includes issuance of a building permit, payment of all development and permit fees, and/or that the unit is eligible to be lawfully occupied.
- “Committed assistance” means a local government has entered into a legally enforceable agreement during the first two years of the housing element planning period that obligates sufficient available funds to provide the assistance necessary to make identified units affordable and that the units will be made available for occupancy within two years of the execution of the agreement. “Net increase” means only those units that were not provided committed assistance in the immediately prior planning period.

The following is a checklist intended to provide guidance in determining whether the provisions of Government Code Section 65583.1(c) can be used to address the adequate sites program requirement. A “yes” answer to the questions means the alternative site program option(s) may be applicable to your community.

<b>GENERAL REQUIREMENTS</b> <i>Note: If you cannot answer “yes” to all of the general requirements questions listed below, your jurisdiction is not eligible to utilize the alternate adequate sites program provisions set forth in Government Code Section 65583.1(c).</i>	
<b>65583.1(c)(4)</b> Is the local government providing, or will it provide “committed assistance” within the first 2 years of the planning period? See the definition of “committed assistance” on page 4.	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>65583.1(c)(1)(A)</b> Has the local government identified the specific source of “committed assistance” funds?  If yes: specify the amount and date when funds will be dedicated through a (legally enforceable agreement). \$ date: _____	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>65583.1(c)(3)</b> Has at least some portion of the regional share housing need for very low-income (VL) or low-income (L) households been met in the current or previous planning period?  Specify the number of affordable units permitted/constructed in the previous period.  Specify the number affordable units permitted/constructed in the current period and document how affordability was established.	<input type="checkbox"/> Yes <input type="checkbox"/> No  _____  _____
<b>65583.1(c)(1)(B)</b> Indicate the total number of units to be assisted with committed assistance funds and specify funding source.	
<b>65583.1(c)(1)(B)</b> Will the funds be sufficient to develop the identified units at affordable costs or rents?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>65583.1(c)(1)(C)</b> Do the identified units meet the substantial rehabilitation, conversion, or preservation requirements as defined? Which option? _____	<input type="checkbox"/> Yes <input type="checkbox"/> No

<b>SUBSTANTIAL REHABILITATION (65583.1(c)(2)(A))</b>	
Include reference to specific program action in the housing element.	Program _____
<b>65583.1(c)(2)(A)</b> Will the rehabilitation result in a net increase in the number of housing units available and affordable to very low- and lower-income households?  If so, how many units?	<input type="checkbox"/> Yes <input type="checkbox"/> No  # of VLI units ____ # of LI units ____
<b>65583.1(c)(2)(A)(i) (I)</b> Are units at imminent risk of loss to affordable housing stock?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>65583.1(c)(2)(A)(i) (II)</b> Is the local government providing relocation assistance consistent with Health and Safety Code Section 17975, including rent and moving expenses equivalent to four (4) months, to those occupants permanently or temporary displaced?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>65583.1(c)(2)(A)(i) (III)</b> Will tenants will have the right to reoccupy units?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>65583.1(c)(2)(A)(i) (IV)</b> Have the units been determined to be unfit for human habitation due the <u>at least four</u> (4) of the following violations? (a) Termination, extended interruption or serious defects of gas, water or electric utility systems provided such interruptions or termination is not caused by the tenant's failure to pay such gas, water or electric bills. (b) Serious defects or lack of adequate space and water heating. (c) Serious rodent, vermin or insect infestation. (d) Severe deterioration, rendering significant portions of the structure unsafe or unsanitary. (e) Inadequate numbers of garbage receptacles or service. (f) Unsanitary conditions affecting a significant portion of the structure as a result of faulty plumbing or sewage disposal. (g) Inoperable hallway lighting.	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>65583.1(c)(2)(A)(ii)</b> Will affordability and occupancy restrictions be maintained for at least 20 years?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>65583.1(c)(2)(A)(iii)</b> Note: Prior to occupancy of the rehabilitated units, the local government must issue a certificate that finds the units comply with all local and State building and health and safety requirements.	

<b>CONVERSION OF MULTIFAMILY RENTAL UNITS OF 4 OR MORE FROM NON-AFFORDABLE TO AFFORDABLE (65583.1(c)(2)(B))</b>	
Include reference to specific program description in the housing element.	Program _____
<b>65583.1(c)(2)(B)(i)</b> Will the acquired units be made affordable to low- or very low-income households?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>65583.1(c)(2)(B)(ii)</b> Were the units affordable to very low- or low-income households at the time they were identified for acquisition?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>65583.1(c)(2)(B)(iii)</b> If the acquisition results in the displacement of very low- or low-income households, is the local government providing relocation assistance consistent with Health and Safety Code Section 17975, including rent and moving expenses equivalent to four (4) months, to those occupants permanently or temporary displaced?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>65583.1(c)(2)(B)(iv)</b> Will units be decent, safe, and sanitary upon occupancy?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>65583.1(c)(2)(B)(v)</b> Will affordability and occupancy restrictions be maintained at least 55 years?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>PRESERVATION OF AFFORDABLE UNITS (65583.1(c)(2)(C))</b>	
Include reference to specific program action in housing element.	Program _____
<b>65583.1(c)(2)(C)(i)</b> Will affordability and occupancy restrictions be maintained for at least 40 years?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>65583.1(c)(2)(C)(ii)</b> Are the units located within an "assisted housing development" as defined in Government Code Section 65863.10(a)(3)? See definition on page 4.	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>65583.1(c)(2)(C)(iii)</b> Did the city/county, via the public hearing process, find that the units are eligible and are reasonably expected to convert to market rate during the next 5 years, due to termination of subsidies, prepayment, or expiration of use?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>65583.1(c)(2)(C)(iv)</b> Will units be decent, safe, and sanitary upon occupancy?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>65583.1(c)(2)(C)(v)</b> Were the units affordable to very low- and low-income households at the time the units were identified for preservation?	<input type="checkbox"/> Yes <input type="checkbox"/> No

## **KEY IDEAS**

### **II. HELPFUL HINTS**

#### **DEFINITIONS:**

Committed Assistance: When a local government has entered into a legally enforceable agreement during the first two years of the housing element planning period obligating funds for affordable units available for occupancy within two years of the agreement.

Assisted Housing Development: A multifamily rental housing development that receives governmental assistance under any of the following programs:

- (A) New construction, substantial rehabilitation, moderate rehabilitation, property disposition, and loan management set-aside programs, or any other program providing project-based assistance, under Section 8 of the United States Housing Act of 1937, as amended (42 U.S.C. Sec. 1437f).
- (B) The following federal programs:
  - (i) The Below-Market-Interest-Rate Program under Section 221(d)(3) of the National Housing Act (12 U.S.C. Sec. 1715l(d)(3) and (5)).
  - (ii) Section 236 of the National Housing Act (12 U.S.C. Sec. 1715z-1).
  - (iii) Section 202 of the Housing Act of 1959 (12 U.S.C. Sec. 1701q).
- (C) Programs for rent supplement assistance under Section 101 of the Housing and Urban Development Act of 1965, as amended (12 U.S.C. Sec. 1701s).
- (D) Programs under Sections 514, 515, 516, 533, and 538 of the Housing Act of 1949, as amended (42 U.S.C. Sec. 1485).
- (E) Section 42 of the Internal Revenue Code.
- (F) Section 142(d) of the Internal Revenue Code (tax-exempt private activity mortgage revenue bonds).
- (G) Section 147 of the Internal Revenue Code (Section 501(c)(3) bonds).
- (H) Title I of the Housing and Community Development Act of 1974, as amended (Community Development Block Grant Program).
- (I) Title II of the Cranston-Gonzales National Affordable Housing Act of 1990, as amended (HOME Investment Partnership Program).
- (J) Titles IV and V of the McKinney-Vento Homeless Assistance Act of 1987, as amended, including the Department of Housing and Urban Development's Supportive Housing Program, Shelter Plus Care program, and surplus federal property disposition program.
- (K) Grants and loans made by the Department of Housing and Community Development, including the Rental Housing

Construction Program, CHRP-R, and other rental housing finance programs.

- (L) Chapter 1138 of the Statutes of 1987.
- (M) The following assistance provided by counties or cities in exchange for restrictions on the maximum rents that may be charged for units within a multifamily rental housing development and on the maximum tenant income as a condition of eligibility for occupancy of the unit subject to the rent restriction, as reflected by a recorded agreement with a county or city:
  - (i) Loans or grants provided using tax increment financing pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code).
  - (ii) Local housing trust funds, as referred to in paragraph (3) of subdivision (a) of Section 50843 of the Health and Safety Code.
  - (iii) The sale or lease of public property at or below market rates.
  - (iv) The granting of density bonuses, or concessions or incentives, including fee waivers, parking variances, or amendments to general plans, zoning, or redevelopment project area plans, pursuant to Chapter 4.3 (commencing with Section 65915).